

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

DAVID McILWAIN,

05-CV-1151-ST

Plaintiff,

ORDER

v.

COMMISSIONER OF INTERNAL REVENUE,  
MARK W. EVERSON; UNKNOWN I.R.S.  
EMPLOYEES; OREGON DEPARTMENT OF  
REVENUE, DIRECTOR ELIZABETH  
HARCHENKO; ANGIE LONG; CEO OF  
RELIABLE SERVICE PEOPLE, INC.,  
MARK K. SELLARS OF SCHWABE,  
WILLIAMSON AND WYATT, P.C.,

Defendants.

BROWN, Judge.

Magistrate Judge Janice M. Stewart issued Findings and Recommendation (#43) on October 6, 2005, in which she recommended the Court grant the Motion to Dismiss (#7) of Defendants Oregon Department of Revenue and Elizabeth Harchenko with prejudice. Plaintiff filed timely objections to the Findings and

Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Mach., Inc.*, 656 F.2d 1309, 1313 (9<sup>th</sup> Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). This Court has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

#### **CONCLUSION**

The Court **ADOPTS** Magistrate Judge Stewart's Findings and Recommendation (#43) and, accordingly, **GRANTS** the Motion to Dismiss (#7) of Defendants Oregon Department of Revenue and Elizabeth Harchenko and, as to these Defendants only, **DISMISSES** this action **WITH PREJUDICE**.

IT IS SO ORDERED.

DATED this 9<sup>th</sup> day of January, 2006.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge